

11/10/93

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
Monsanto Company, and Mark) I.F. & R. Docket No. VII-1228C-93P
Fett d/b/a Northwood)
Ag Products,)
)
)
Respondents)

**ORDER DENYING MOTION TO HOLD PROCEEDINGS IN
ABEYANCE AND SETTING PREHEARING PROCEDURES**

As you have been previously notified, I have been designated by order of the Chief Administrative Law Judge, dated November 3, 1993, to preside in the above-captioned matter. This proceeding arises under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 1(a)). The applicable EPA Rules of Practice (Rules) are found in 40 C.F.R. Part 22.

By motion dated October 12, 1993, Respondent, Monsanto Company ("Monsanto") requests that the above-captioned proceeding be held in abeyance pending the outcome of three other cases currently in progress--American Cyanamid and Sur-Gro Plant Foods, et al., ("Sur-Gro"), ICI Americas, Inc. and Dodge City Cooperative Exchange ("ICI"), and/or Monsanto Company and Simpson Farm Enterprises, Inc., ("Simpson Farm"), I.F. & R. Docket Nos. VII-1129C-92P and VII-1191C-92P, VII-1193C-93P, respectively.

Respondent, Northwood Ag Products, did not join in Monsanto's motion.

Monsanto alleges that the central legal issue presented is the same in all three cases. In the interests of all parties to this proceeding, judicial economy, and consistency in decision, Monsanto urges that I await the outcome of the Sur-Gro, ICI and Simpson Farm cases.

On October 14, 1993, Complainant, Region VII of the Environmental Protection Agency, filed in opposition to the request. Complainant argues that it is by no means clear that the cases cited by Monsanto would be decided earlier than the instant case. Complainant says that by allowing all cases to proceed chances are increased for an early resolution of the issue.

My review of the pleadings and case file does not convince me that the disposition of the issues in the cases cited by Respondent would be necessarily dispositive of the issues pending in this proceeding. Nor am I convinced that the decision in those cases would necessarily precede a decision in the instant case. In any event, Monsanto may file a motion for accelerated decision in the instant proceeding should a decision, which it considers controlling, issue in one of the ongoing cases. Under these circumstances, it is necessary to invoke procedures which will bring this case to resolution. Accordingly, Monsanto's motion is denied.

Agency policy encouraging settlement is set out in Section 22.18(a) of the Rules, 40 C.F.R. §22.18(a), and you may be attempting to settle this matter. The benefits of a negotiated settlement may far outweigh the uncertainty, the time and the expense associated with a litigated proceeding. To keep me apprised of the parties' settlement efforts, Counsel for Complainant is directed to file on or before May 13, 1994, a statement with respect to the status of settlement negotiations.

If the case is not settled by that date, the requirements in this order will meet some of the purposes of a prehearing conference, as permitted by Section 22.19(e) of the Rules.

Accordingly, it is directed that the following prehearing exchange take place between the parties:


1. Pursuant to Section 22.19(b) of the Rules, each party shall submit the names of the expert and other witnesses intended to be called at the hearing with a brief narrative summary of their expected testimony, and copies of all documents and exhibits intended to be introduced into evidence. The documents and exhibits shall be identified as "Complainant's" or "Respondent's" exhibit, as appropriate, and numbered with Arabic numerals (e.g., Complainant's Ex. 1).
2. The Complainant shall set out how the proposed penalty was determined, and shall state in detail how the specific provisions of any EPA penalty or enforcement policies and/or guidelines were used in calculating the penalty.
3. If Respondent intends to take the position that it is unable to pay the proposed penalty, or that payment will have an adverse effect on Respondent's ability to continue to do business, Respondent shall furnish certified copies of Respondent's statement of financial position (or in lieu thereof copies of Respondent's federal tax return) for the last fiscal year.

4. The Complainant shall submit a statement regarding whether the Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. Section 3501 et seq., applies to this proceeding, whether there is a current Office of Management and Budget control number involved herein and whether the provisions of Section 3512 of the PRA are applicable in this case.
5. Each party shall submit its views as to the place of hearing. See the Sections 22.21(d) and 22.19(d) of the Rules.

If the case is settled, the Consent Agreement and Final Order signed by the parties should be submitted no later than June 17, 1994. If a Consent Agreement and Final Order have not been signed by that date, the prehearing exchange directed above should be made on June 17, 1994. The parties will be expected to make this prehearing exchange unless, prior to the due date an extension of time has been obtained pursuant to Section 22.07(b) of the Rules. The parties will then have until July 7, 1994 to reply to statements or allegations of the others contained in the prehearing exchange.

The original of all statements and pleadings (with any attachments) required or permitted to be filed by this order, shall be sent to the Regional Hearing Clerk and copies (with and attachments) shall be sent to the opposing party and to the Presiding Judge. If photographs are to be submitted in the prehearing exchange, the party submitting such photographs should provide the actual photograph to all parties concerned in the proceeding (copies reproduced on a duplicating machine will not be acceptable). Copies of statements and pleadings sent to the Presiding Judge shall be addressed to:

Judge Jon G. Lotis
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900
401 M Street, S.W.
Washington, D.C. 20460



Jon G. Lotis
Administrative Law Judge

Dated: November 10, 1993
Washington, D.C.

IN THE MATTER OF MONSANTO COMPANY, AND MARK FETT D/B/A
NORTHWOOD AG PRODUCTS, Respondents,
I.F. & R. Docket No. VII-1228C-93P

CERTIFICATE OF SERVICE

I certify that the foregoing Order Denying Motion to Hold Proceedings in Abeyance and Setting Prehearing Procedures, dated November 10, 1993, was sent in the following manner to the addressees listed below:

Original by Regular Mail to:

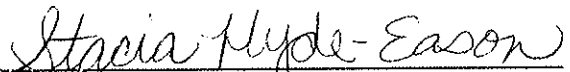
Venessa R. Cobbs
Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region VII
726 Minnesota Avenue
Kansas City, KS 66101

**Copy by Certified Mail, Return
Receipt Requested to:**

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Washington, D.C. 20460

Dated: November 10, 1993
Washington, D.C.